

MAR 30 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL A. JONES,

Petitioner - Appellant,

v.

DERRAL G. ADAMS, Warden,

Respondent - Appellee.

No. 06-56302

D.C. No. CV-06-00162-JFW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
John F. Walter, District Judge, Presiding

Submitted March 18, 2009<sup>\*\*</sup>

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

California prisoner Carl A. Jones appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition challenging his jury-trial conviction

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for making a criminal threat, in violation of California Penal Code § 422. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Jones contends that the trial court violated his due process rights by failing to instruct the jury that a unanimous verdict was required. This court granted a certificate of appealability on the issue of whether the state court's harmless error analysis was objectively unreasonable. However, the Supreme Court "has never held jury unanimity to be a requisite of due process of law." *Johnson v. Louisiana*, 406 U.S. 356, 359 (1972) (holding that the reasonable doubt standard does not require a unanimous jury verdict in all criminal cases). Accordingly, we conclude that the state court's rejection of Jones's due process claim was neither contrary to, nor involved an unreasonable application of, clearly established federal law as determined by the Supreme Court. *See* 28 U.S.C. § 2254(d); *see also Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991).

**AFFIRMED.**